



## State of Utah

### Department of Natural Resources

MICHAEL R. STYLER  
*Executive Director*

### Division of Oil, Gas & Mining

JOHN R. BAZA  
*Division Director*

JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

December 13, 2005

CERTIFIED RETURN RECEIPT  
7002 0510 0003 8603 2618

Matt Carter  
Timberline Rock Pit, LLC  
334 North Marshall Way, Suite A  
Layton, Utah 84041

Subject: Proposed Assessment for Cessation Orders, MC-2005-01-18(2),  
Timberline Rock Pit, LLC, Timberline Rock Pit Mine, S/049/053, Utah  
County, Utah

Dear Mr. Carter:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division Inspector, Lynn Kunzler, on November 21, 2005. Rule R647-7-103 et. seq. has been utilized to formulate the proposed penalty for the violation as follows:

- MC-05-01-18- Violation 1 of 2 \$1,430
- MC-05-01-18—Violation 2 of 2 \$1,430

The enclosed worksheet specifically outlines how the violations were assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Cessation Order has been considered in determining the facts surrounding the violation and the amount of penalty. If the violation has not been abated at the time of the proposed assessment, the assignment of good faith points cannot be made. If you feel that you are eligible for good faith, you should supply relevant information to the assessment officer within 15 days of the violation abatement date so that it can be factored into the final assessment.

Matt Carter  
Page 2 of 2  
S/049/053  
December 13, 2005

Otherwise, under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director or Associate Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment.** Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,



Daron R. Haddock  
Assessment Officer

DRH:jb  
Enclosure: Worksheet  
cc: Vicki Bailey, Accounting  
Vickie Southwick, Exec. Sec.  
O:\M049-Utah\S0490053-Timberline\non-compliance\ProAssessltr.doc

**WORKSHEET FOR ASSESSMENT OF PENALTIES**  
**DIVISION OF OIL, GAS & MINING**  
**Minerals Regulatory Program**

COMPANY / MINE Timberline Rock Pit LLC/ Timberline Mine PERMIT S/049/053

NOV / CO # MC-2005-01-18(2) VIOLATION 1 of 2

ASSESSMENT DATE December 9, 2005

ASSESSMENT OFFICER Daron R. Haddock

**I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)**

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>none</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

**TOTAL HISTORY POINTS 0**

**II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)**

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event  
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *An Operator is required to obtain a reclamation bond prior to conducting mining activities. The Operator had applied for a permit and had submitted some bond information but had not received final approval to mine and yet had commenced mining operations anyway. Several acres have been disturbed at this location without first posting the required surety for reclamation purposes. Mining has occurred without final approval. Disturbance has actually occurred.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 5

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector stated that the operator has disturbed over 5 acres of land. The damage is primarily the loss of vegetation and compaction of soil on the area disturbed. Without a bond to ensure reclamation, there is the potential that the site could go unreclaimed. Further discussion with the inspector, revealed that the damage is probably temporary. The site could still be reclaimed. Damage is assessed in the lower part of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? \_\_\_\_\_  
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS \_\_\_\_\_

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

TOTAL SERIOUSNESS POINTS (A or B) 25

**III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)**

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 8

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\*** *The inspector indicated that the permittee had been notified in writing 3 times that until the surety and reclamation contract were approved, there was to be no mining activity at the site. The Permittee had posted bond and received tentative approval for the Notice of Intent but had not received final approval. The permittee had sold some of the rock material to another operator who actually did the excavation. When the permittee went to the site after the violation was written he was surprised to see the amount of disturbance that had been created. This indicates lack of reasonable care. A prudent operator would understand the need to obtain approval prior to allowing mining operations to proceed. Once the requirements were explained to the Operator, he was very cooperative and expressed the desire to achieve compliance. The Operator was considered negligent for not keeping better track of the operations, thus the assignment of points in the middle of the negligence range.*

**IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)**

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

**Easy Abatement Situation**

X	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
X	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	
X	Normal Compliance	0
	(Operator complied within the abatement period required)	

(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

\*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

X	Rapid Compliance	-11 to -20*
	(Permittee used diligence to abate the violation)	
X	Normal Compliance	-1 to -10*
	(Operator complied within the abatement period required)	
X	Extended Compliance	0
	(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)	
	(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)	

EASY OR DIFFICULT ABATEMENT? Difficult

ASSIGN GOOD FAITH POINTS 0

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The abatement has not yet been completed, so good faith points cannot be awarded at this time. This category will be looked at again after the abatement has been completed. Points will be awarded depending on how quickly the abatement is met.*

**V. ASSESSMENT SUMMARY (R647-7-103.3)**

NOTICE OF VIOLATION # MC-04-01-18(1)

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>25</u>
III.	TOTAL NEGLIGENCE POINTS	<u>8</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-</u>
	TOTAL ASSESSED POINTS	<u>33</u>

**TOTAL ASSESSED FINE** \$ 1,430

**WORKSHEET FOR ASSESSMENT OF PENALTIES**  
**DIVISION OF OIL, GAS & MINING**  
**Minerals Regulatory Program**

COMPANY / MINE Timberline Rock Pit LLC/ Timberline Mine PERMIT S/049/053

NOV / CO # MC-2005-01-18(2)

VIOLATION 2 of 2

ASSESSMENT DATE December 9, 2005

ASSESSMENT OFFICER Daron R. Haddock

**I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)**

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>none</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

**TOTAL HISTORY POINTS 0**

**II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)**

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event  
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *An Operator is required to obtain approval of a Notice of Intent prior to conducting mining activities. The Operator had submitted a Notice of Intent to mine only one acre. Actual mine disturbance is estimated to be in excess of 5 acres. A number of acres have been disturbed at this location without first obtaining approval. Disturbance has actually occurred.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 5

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector stated that the operator has disturbed more than 4 acres of land over the amount identified in the Notice of Intent. The damage is primarily the loss of vegetation and compaction of soil on the area disturbed, which is now covered with small pits, excavations and access roads. Further discussion with the inspector revealed that the damage is probably temporary and is consistent with the types of disturbance associated with this type of permitted operation. The site could still be reclaimed. Damage is assessed in the lower part of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? \_\_\_\_\_  
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS \_\_\_\_\_

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

TOTAL SERIOUSNESS POINTS (A or B) 25



**III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)**

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 8

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\*** *The inspector indicated that the permittee had been notified in writing 3 times that until the surety and reclamation contract were approved, there was to be no mining activity at the site. He had posted bond and received tentative approval for the Notice of Intent but had not received final approval. The permittee had sold some of the rock material to another operator (Steven Lee) who actually did the excavation. When the permittee went to the site after the violation was written he was surprised to see the amount of disturbance that had been created. This indicates lack of reasonable care. A prudent operator would understand the need to obtain approval prior to allowing mining operations to proceed. Once the requirements were explained to the Operator, he was very cooperative and expressed the desire to achieve compliance. The Operator was considered negligent for not keeping better track of the operations, thus the assignment of points in the middle of the negligence range.*

**IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)**

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?  
IF SO--EASY ABATEMENT

**Easy Abatement Situation**

X	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
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	(Permittee used diligence to abate the violation)	
X	Normal Compliance	0
	(Operator complied within the abatement period required)	

(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

\*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

**IF SO--DIFFICULT ABATEMENT**

**Difficult Abatement Situation**

- |   |   |             |
|---|---|-------------|
| X | Rapid Compliance  | -11 to -20* |
|   | (Permittee used diligence to abate the violation)   |             |
| X | Normal Compliance   | -1 to -10*  |
|   | (Operator complied within the abatement period required)  |             |
| X | Extended Compliance   | 0           |
|   | (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete) |             |
|   | (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)   |             |

EASY OR DIFFICULT ABATEMENT? Difficult

**ASSIGN GOOD FAITH POINTS** 0

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The abatement has not yet been completed, so good faith points cannot be awarded at this time. This category will be looked at again after the abatement has been completed. Points will be awarded depending on how quickly the abatement is met.*

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I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>25</u>
III.	TOTAL NEGLIGENCE POINTS	<u>8</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-</u>
	TOTAL ASSESSED POINTS	<u>33</u>

**TOTAL ASSESSED FINE** \$ 1,430